VDR/tcg 5/8/2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Wayne Williams, Complainant, vs. Allan and Peggy Martin, Defendants.	(ECP) Case 05-10-036 (Filed October 27, 2005)
Donald Shilling, Complainant, vs. Allan and Peggy Martin, Defendants.	(ECP) Case 05-12-020 (Filed December 15, 2005)

ADMINISTRATIVE LAW JUDGE'S RULING REOPENING THE RECORD TO RECEIVE ADDITIONAL EVIDENCE CONCERNING REFUNDS

On December 8, 2005, I heard Case 05-10-036 (the Williams case) in Isleton. At the conclusion of the hearing, I gave complainant Wayne Williams permission to submit an additional exhibit before the record was closed. Williams did so, and the case was submitted for decision on December 30, 2005.

Case 05-12-020 (the Shilling case) was filed on December 15, 2005, before the Williams case was submitted. Inasmuch as complainant Donald Shilling, like

Williams, lived in the defendants' recreational vehicle (RV) park and sought a refund from the defendants on the same grounds as Williams, pursuant to Rule 55 of the Commission's Rules of Practice and Procedure I consolidated the two cases on January 31, 2006. I further ruled that the two cases would be resolved in a single decision after the Shilling case hearing.

I heard the Shilling case in Isleton on February 2, 2006. Only the defendants appeared. However, at the Williams hearing, Shilling testified that the defendants had failed to make a full refund to him because they had allegedly misapplied the tariffs in the same manner claimed by Williams. Although Shilling's testimony in the first hearing was intended only to corroborate Williams' claim, the record is consolidated, and I will rely upon his testimony to resolve his own case.

Each of the complainants lived in the defendants' residential RV park, Martin's Rainbow Resort, for some period between 2002 and 2005. Both apparently qualified for CARE program discounts. The park is submetered, and every tenant pays a metered share of the defendants' total electric bill as part of the rent. A charge for the previous month's electric service appears on each tenant's monthly rent statement. Applicable tariff rules require the defendants to charge their tenants for electric service at rates that the serving utility, in this case Pacific Gas and Electric Company (PG&E), would charge for comparable service. If the defendants overcharge or undercharge for the service for any reason, they must make subsequent adjustments on the same basis as would the serving utility.

A legislated rate reduction was implemented on January 1, 1998, resulting from the Electric Utility Industry Restructuring Act (Assembly Bill 1890), which became law on September 23, 1996. AB 1890 required electric utilities to initiate

a cost recovery plan that set electric rates for customers receiving service from those utilities at June 10, 1996 levels, and provided that rates for customers would be reduced so they would receive rate reductions of at least 10 percent. Effective January 1, 1998, residential and small commercial electric customers began receiving a 10 percent reduction of their electric rates. Because an RV park owner is obligated to pass any rate reduction through to submetered tenants, the owner must refund overcharges that resulted from charging the tenants rates that did not reflect the legislated reduction.

At both hearings Angelina Martin, who manages Martin's Rainbow Resort for the defendants, testified that she had computed and paid, through rent credits or in cash, legislated refunds of PG&E electric charges that had been paid by the tenants of the RV park. The substance of her testimony is summarized below. The dispute in each case is not about whether the defendants paid the refunds—they did—but about whether the refunds were computed properly.

In 2004 Angelina looked up what she believed were the correct PG&E tariff rates, refigured each tenant's past bills, and issued refunds for that year. She later learned from a PG&E representative that she had to go back three years rather than one in order to make full refunds. Accordingly, she calculated the amounts of refunds owed to current and former tenants for 2002 and 2003 from the PG&E rates for those years, and issued the additional refunds in late 2005.

Although it is clear from her testimony that Angelina made a good faith effort to compute and pay the refunds correctly, there are indications that the methodology she used was not entirely correct, so the refunds may not have been the proper amounts. For example, the defendants charged each tenant a $5.00 monthly service charge, which is not provided for in the PG&E tariff, and which should not have been included in their bills. Instead, the tariff provides

that a specified minimum charge per meter per day should be applied, and that the charge should be eliminated once the kilowatt-hour (kWh) use exceeds the amount of the minimum charge for the month.

It is not surprising that the methodology used by the defendants to compute the refunds was incorrect, as the entire tariff structure is intricate and confusing to anyone who is not thoroughly conversant with it. However, the existence of errors in the computations, as well as the absence of information in the record that would enable the Commission to determine the correct amounts of the refunds, requires me to reopen the record to obtain additional information. That is the purpose of this ruling.

The rates that should be used by the defendants are those under Schedule ESR and Schedule ESR-L (for CARE customers) – Residential RV Park and Residential Marina Service. (Historical rates for both CARE and non-CARE customers are available on the PG&E website, www.pge.com/rates_regulation, or by contacting PG&E's customer service organization by toll-free telephone number.) The correct methodology for determining the correct amounts of the refunds is as follows:

1. Baseline Territory and Allowance. Submetered customers on the defendants' account should be billed under Baseline Territory "S" basic electric quantities. Before May 1, 2002, the basic electric allowance was 11.6 kilowatt hours (kWh) from November 1 through April 30 (winter), and 13.8 kWh from May 1 through October 31 (summer). Beginning May 1, 2002, the daily basic electric allowance is 12.8 kWh from November 1 through April 30, and 15.8 for May 1 through October 31.

Total "Tier I" baseline allowances are calculated by multiplying the total number of days in a billing period by the daily basic electric baseline allowance

(e.g., 30 x 11.6 = 348 kWh). Billings for periods that begin in one baseline allowance period (April or October) and end in the other must be computed Tier I baseline allowances on a daily prorated basis, adding the two separate allowances to create a single allowance for the billing period.

If the customer's use exceeded the Tier I baseline allowance, the cost per kWh must be calculated. Electric use in excess of Tier I allowances should be calculated by multiplying the net kWh above the baseline figure by either the corresponding excess or Tier II rate for CARE customers, or by kWh in excess of the Tier I allowance by corresponding Tier I, II, III, IV or V use for non-CARE customers, as appropriate.

2. Rates and Bill Calculations. Rate changes that occur during a billing period must be also be calculated on a prorated basis. This rule must be applied as of April 1, 2003, with the implementation of a $.01 per kWh surcharge for non-CARE customers. CARE baseline and excess quantity rates remain constant from July 1, 2001 through end of October 2004, and decrease on November 1, 2004. Both complainants appear to be CARE customers, so this may not be a factor in the present instance.

CARE customers' bills should be calculated by multiplying electric use by the CARE energy charge rate. The information currently in the record indicates that the defendants calculated the submetered CARE bills by (1) multiplying electric use by non-CARE rates and then (2) subtracting 20 percent of the total, which resulted in inaccurate billing. The calculation method used by the defendants was incorrect because some non-CARE billing components differ from CARE billing components (*e.g.*, DWR Bond Charge).

For CARE customers, the legislated 10 percent refund is applied after the bill is calculated, but before surcharges are included. There are two surcharges:

the utility user's tax (UUT) and the Energy Commission Tax (ECT). For example, if customer uses 200 kWh at $.10/kWh, with a 2.5 percent UUT and a $.00022 per kWh ECT, the net energy cost would be $20.00 minus 10 percent or $2.00 (a net of $18.00), plus the UUT of $.45 ($18.00 energy cost x .025) and ECT of $.04 (200 kWh x .00022), for a total bill of $18.54. The same is true for non-CARE customers, but for the period from April 1, 2003, through October 31, 2004, the process is more complicated because of the addition of energy surcharges. To calculate non-CARE charges while including the discount, multiply the respective Tier allowances by the non-CARE rate minus the surcharge, subtract 10 percent from this result, then add the surcharge amount. The UUT and ECT are then added based on UUT rate.

As noted above, the defendants included a $5.00 monthly service charge in their tenants' bills. The tariff does not provide for this charge, and it should not have been included. There is a minimum charge rate per meter per day of $.11828 for submetered CARE customers, and $.14784 per day for submetered non-CARE customers, producing respective minimum charges of $3.55 and $4.44 for submetered CARE and non-CARE customers for a thirty-day billing period. Once kWh use exceeds the minimum charge amount for the month, this charge is eliminated.

The UUT rate for unincorporated Sacramento County is 2.5 percent, based on the energy charge total. It appears that the defendants incorrectly billed this at 2.78 percent. The UUT should be added to the energy bill before the Energy Commission Tax, which is added last. However, Chapter 3.4 of the Sacramento County Code provides an exemption for the first $45 in total monthly electric charges for a residential user. This exemption is prorated for billing periods that straddle a calendar month, and it results in a residual adjustment in the UUT of a

few cents for each customer. As a practical matter, this amounts to approximately $1.20 a month to the master account, or 2 to 3 cents per submetered customer. Due to month-to-month/billing period proration requirements, this is a difficult calculation for the RV park owner. In view of this fact, I believe that it is better simply to require the defendants to charge the UUT at 2.5 percent without the further complication of factoring and distributing the tax exemption across close to fifty accounts, as the difference is negligible.

Various unbundled charges for generation, transmission, PPP, distribution, and so forth have been inappropriately billed to the tenants, as these submetered customers are billed on an unbundled basis. The defendants' billing is inappropriate, as these costs are already included in the "bundled" rates and thus should not have been billed to the submetered tenants.

Lastly, the Energy Commission Tax is calculated on the basis of kWh use at $.00022 per kWh, so the ECT on 500 kWh = $.11, or 11 cents.

3. Summary of Proper Methodology. To compute the totals for billing purposes, the defendants should add the various subtotals as follows: Energy Charge minus any discounts (or plus any energy surcharges), plus UUT at 2.5 percent of energy cost and ECT at total kWh use times $.00022.

IT IS THEREFORE RULED that:

1. The consolidated record in this matter is reopened for the purpose of receiving additional information concerning the refunds the defendants have issued by payment or credit to the complainants in this matter.

2. The defendants shall, within 30 days of the date of this ruling, serve upon the administrative law judge, and shall serve a copy thereof upon each of the complainants, an exhibit showing the recalculated amounts of the legislated refunds owed to each of the complainants for the three-year period from 2002

through 2004, prepared in accordance with the instructions set forth above, and including a reference to the source of each rate used in the calculations. If the amounts of the refunds vary from the refunds that have actually been issued to the complainants, the amounts of the variances shall be shown.

3. This matter shall be resubmitted upon receipt of the additional exhibit as ruled herein.

Dated May 8, 2006, at San Francisco, California.

/s/ VICTOR D. RYERSON
Victor D. Ryerson
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Reopening the Record to Receive Additional Evidence Concerning Refunds on all parties of record in this proceeding or their attorneys of record.

Dated May 8, 2006, at San Francisco, California.

/s/ TERESITA C. GALLARDO
Teresita C. Gallardo

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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